

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KARLIS RUBEN AUGUSTUS
HOWARD,

Plaintiff,

v.

HEATHER SHIRLEY, et al.,

Defendants.

Case No. 1:24-cv-00387-HBK (PC)

ORDER NOTING VOLUNTARY
DISMISSAL UNDER FED. R. CIV. P.
41(a)(1)(A)(i) AND FED. R. CIV. P. 15(a) OF
CERTAIN CLAIMS AND DEFENDANTS

(Doc. No. 11)

Plaintiff Karlis Ruben Augustus Howard, a state prisoner, is proceeding pro se and *in forma pauperis* in this action filed under 42 U.S.C. § 1983. On August 9, 2024, this Court issued a screening order on Plaintiff's First Amended Complaint ("FAC"). (Doc. No. 10). As discussed in the Court's screening order, the Court found the FAC stated cognizable Eighth Amendment conditions of confinement claims against Defendants Shirley, Cronjager, and DeGough, and state law claims against the same three individuals for negligence, intentional infliction of emotional distress, and negligent infliction of emotional distress, but failed to state any other cognizable claims. (*Id.* at 1-2). Specifically, the Court found the FAC does not state any claim against

1 Defendants California Department of Corrections and Rehabilitation (“CDCR”), City of Wasco,
2 County of Kern, and Wasco State Prison. (*See generally id.*) The Screening Order afforded
3 Plaintiff the opportunity to either (1) file a notice under Rule 41 and Federal Rule of Civil
4 Procedure 15 that he is willing to proceed only on the claims the court found cognizable in its
5 screening order; or (2) stand on his FAC subject to the undersigned issuing Findings and
6 Recommendations to dismiss the claims not deemed cognizable. (*Id.* at 13-15).

7 On August 22, 2024, Plaintiff filed a “Notice Under Rule 41 and Rule 15(a).” (Doc. No.
8 11). In his signed and dated Notice, Plaintiff states:

9 In response to this great and honorable Court’s Order on August 9,
10 2024, The Plaintiff, Karlis Ruben August Howard contends he
11 intends to stand on his FAC as screened herein and proceed only on
12 his Eighth Amendment conditions of confinement, and state law
13 negligence, IIE, and NIED claims against Defendants DeGough,
Shirley and Cronjager, thereby voluntarily dismissing Defendants
CDCR, City of Wasco, County of Kern, and Wasco State Prison
and the remaining claims the Court deemed not cognizable.

14 (Doc. No. 11 at 3).

15 A plaintiff may voluntarily dismiss any defendant or claim without a court order by filing
16 a notice of dismissal before the opposing party answers the complaint or moves for summary
17 judgment. Fed. R. Civ. P. 41 (a)(1)(A)(i). Here, no party has answered or moved for summary
18 judgment. (*See* docket). Further, the Ninth Circuit recognizes a party has an absolute right prior
19 to an answer or motion for summary judgment to dismiss fewer than all named defendants or
20 claims without a court order. *Pedrina v. Chun*, 987 F.2d 608, 609-10 (9th Cir. 1993).

21 Alternatively, Plaintiff’s Notice is properly construed as a motion to amend the FAC under
22 Federal Rule of Civil Procedure 15(a). *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d
23 683, 687 (9th Cir. 2005) (Rule 15(a) “is appropriate mechanism” when party is eliminating an
24 issue or one or more claims but not completely dismissing a defendant).

25 In accordance with Plaintiff’s Notice, Plaintiff’s FAC will proceed only on his Eighth
26 Amendment conditions of confinement claims against Defendants Shirley, Cronjager, and
27 DeGough, and state law claims against the same three individuals for negligence, intentional
28 infliction of emotional distress, and negligent infliction of emotional distress only. (*See* Doc. No.

11). Defendants CDCR, City of Wasco, County of Kern, and Wasco State Prison are voluntarily dismissed under Rule 15 and any other claims deemed not cognizable are deemed withdrawn under Rule 15.

Accordingly, it is **ORDERED**:

1. The Court recognizes Plaintiff's voluntary dismissal of Defendants California Department of Corrections and Rehabilitation, City of Wasco, County of Kern, and Wasco State Prison.
2. The Court will direct service upon Defendants Shirley, Cronjager, and DeGough by separate order.

Dated: August 26, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE